

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 15, 2015

In re SCHOFIELD, Minors,

No. 321704
Wayne Circuit Court
Family Division
LC No. 12-509940-NA

Before: DONOFRIO, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent E. Schofield appeals as of right from the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

I. BACKGROUND

The children were removed from the care of their aunt and legal guardian in October 2012 due to improper supervision, neglect, and substance abuse.¹ At the time of removal, respondent had not parented his son since 2005 and had never parented his daughter. Respondent was incarcerated at the time the trial court conducted a bench trial in December 2012 to determine jurisdiction. Respondent participated in the trial and admitted having a history of mental illness, prior involvement with the Department of Human Services (DHS), and a history of substance abuse. The trial court obtained jurisdiction over the children and adopted a treatment plan whereby respondent was required to participate in parenting classes, substance abuse therapy, random weekly drug screens, anger management therapy, undergo evaluation by the Clinic for Child Study, obtain psychological and psychiatric evaluations, and attend individual therapy. The court also ordered respondent to maintain his mental health, obtain and maintain suitable housing, and obtain a legal source of income.

Respondent failed to consistently participate in services or to benefit from those in which he participated. He was terminated early from substance abuse therapy and anger management counseling. He failed to submit to weekly random drug screens and he tested positive for

¹ The guardianship was established after the children's mother died in June 2008.

marijuana, cocaine, and opiates on three occasions when required to test at the court facility. He completed parenting classes, but did not benefit from the classes. He missed 21 out of 80 parental visits. His behavior during visits was often inappropriate. For example, he asked one caseworker where he could purchase marijuana. During another visitation he became extremely angry in front of the children and threatened workers while cursing and using vulgar language when he lost his earphones and a phone charger at the facility. His Facebook page displayed a picture of him with marijuana in his hand and a caption that read, "Kush is my cologne."

He demonstrated that he could not provide adequate shelter for the children. He lived with relatives in a home that was not suitable for the children. Additionally, both children had special needs because of extreme behavioral issues. Social service workers opined that respondent could not meet the needs of the children and would not be able to provide the highly structured environment that the children required within a reasonably foreseeable time. Accordingly, in February 2014, petitioner filed a supplemental petition to terminate respondent's parental rights. Following a hearing, the trial court terminated respondent's parental rights to both children.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). The trial court's factual findings, as well as its ultimate determination that a statutory ground for termination has been proven, are reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Laster*, 303 Mich App 485, 491, 845 NW2d 540 (2013).

The trial court terminated respondent's parental rights in part under MCL 712A.19b(3)(c)(i) and (c)(ii), which permit termination of parental rights under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to

rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Termination under these subsections requires a court to assess the likelihood that the circumstances that led to the adjudication, or any other conditions that would cause a child to come within the court's jurisdiction, will be rectified within a reasonable time considering the ages of the children. The determination of what is reasonable includes both how long it will take the parent to improve and how long a child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

Respondent's parental rights were terminated more than 182 days after the January 2013 issuance of the initial dispositional order in April 2014. The children were removed from the home of a guardian due to improper supervision by that guardian and the admissions of the respondent that he had a history of involvement with CPS, suffered from mental illness, and was incarcerated for a domestic violence conviction at the time of the adjudication of his children.

The trial court did not clearly err in finding that termination of respondent's parental rights was warranted under §§ 19b(3)(c)(i) and (c)(ii). Respondent failed to comply with most aspects of his treatment plan and failed to make progress in rectifying either the conditions that led to the children's placement into care or other conditions that prevented the children from being reunited with respondent. He was terminated early from substance abuse therapy and anger management counseling. He completed parenting classes, but did not benefit from the classes. He continued to lose his temper and yell and curse in front of the children. He failed to learn to appropriately control or redirect the children. He never progressed beyond one-hour supervised visits at the agency. He failed to submit to required drug screens and, during the proceedings, he tested positive for cocaine, opiates, and marijuana.

The court also found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(g), which provides that the court may terminate parental rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

This subsection requires clear and convincing evidence of both a failure and an inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). A parent's compliance with a parent-agency agreement is evidence of the parent's ability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Likewise, a parent's failure to comply with a parent-agency agreement can be a valid indication of neglect. *In re Trejo*, 462 Mich at 360-361 n 16.

Respondent failed to provide proper care for his children. Respondent never learned how to appropriately discipline his children. Despite participation in therapy, he exhibited anger during parenting visits. While this might have improved over time with consistent visits, he failed to consistently visit the children, indicating instead that the bus system took too much time or it was too cold outside. He failed to obtain suitable housing despite attempts by the DHS to

aide him in finding appropriate housing. In determining that he not only failed to provide care for his children but was also not likely to do so within a reasonable time, the trial court found that despite requests for referrals, respondent's noncompliance demonstrated that he was not fully committed to participation in the program. The trial court did not clearly err in finding that termination of respondent's parental rights was justified under § 19b(3)(g).

The trial court also terminated respondent's parental rights under MCL 712A.19b(3)(j), which provides that parental rights may be terminated if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

During this case, respondent continued to lose his temper, yell, and curse in front of the children. He threatened caseworkers and used profanity toward staff in the presence of other children when he returned to the facility to retrieve a phone charger and some earphones he had forgotten. He participated in anger management therapy, but was terminated without completing it. Despite ongoing participation in substance abuse services, he continued to abuse substances and tested positive for cocaine, marijuana, and alcohol. He asked a caseworker where he could purchase marijuana. He failed to understand the needs of his children and lacked appropriate judgment during parenting visits. This evidence supports the trial court's finding that termination of respondent's parental rights was justified under § 19b(3)(j).

III. REASONABLE EFFORTS

Respondent next argues that the trial court erred in determining that petitioner made reasonable efforts to reunify him with his children. We again disagree. When a child is removed from the custody of a parent, the DHS is required to make reasonable efforts to rectify the conditions that led to the child's removal, to reunify the family, and to avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Respondent relies on *In re Mason*, 486 Mich 142, and *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009), in support of his argument that his parental rights were prematurely terminated.

This case is clearly distinguishable from *In re Mason* and *In re Rood*. Unlike the respondents in those cases, respondent here was given notice of the proceedings and ample opportunity to participate in services. A treatment plan was implemented that included a plethora of services, including parenting classes, two parent partners, supervised visits with his children, anger management therapy, substance abuse therapy, individual therapy, psychiatric and psychological assessments, and assistance in obtaining housing and employment. Respondent complains that he was "blindsided" by the testimony at the termination hearing that he lacked appropriate parenting skills and had not benefitted from services. He suggests that had he known this, he could have further participated in services and thereby avoided a termination hearing. The behaviors that supported the petition to terminate, on-going substance abuse, outbursts of anger, termination from programs and failure to visit were all known to respondent. The claim of failure to provide reasonable services is without merit. The trial court did not clearly err in finding that petitioner made reasonable efforts to reunite respondent with his children.

IV. BEST INTERESTS

Respondent lastly argues that the trial court erred in finding that termination of his parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining what is in a child's best interests, the trial court may consider a variety of factors including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home, *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), as well as a respondent's history, psychological evaluation, and parenting techniques, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). A trial court's decision regarding a child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357.

Both children had severe behavioral issues and required a highly structured environment, and neither had any significant bond with respondent. Moreover, respondent conceded that he did not feel that he could plan for his son. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens